

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TRAVIS CASEY
Plaintiff

v.

OFFICER DAVID RODRIGUEZ and
THE CITY OF AUSTIN
Defendants

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§
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§
§

A-09-CA-337 SS

AFFIDAVIT OF DAVID RODRIGUEZ

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned Notary Public, on this day appeared DAVID RODRIGUEZ, who, being by me first duly sworn, stated as follows:

1. "My name is David Rodriguez I am over the age of eighteen years and I am competent to make this affidavit. I have never been convicted of a felony or any crime involving moral turpitude.

2. I have been a Patrol Officer in the Austin Police Department ("APD") since January 2009, and have been employed by the City of Austin since May 2005. I received my Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") certification after completing the Police Academy at San Antonio College for nine (9) months before entering into law enforcement, then attained my Peace Officers license in 2004 at Texas Lutheran University Police Department.

3. I am a Hispanic male, and I was 38 years old, 5'6", 140 pounds, clean-shaven with short hair in 2007.

4. I have read Plaintiff's First Amended Complaint and am familiar with the allegations. On April 30, 2007, I was a Police Officer for the Parks Unit of the Public Safety & Emergency Management ("PSEM") Department in the City of Austin, before it merged into APD in January 2009. PSEM was receiving increasing complaints about children finding condoms and seeing men having sex in cars and restrooms at Walnut Creek Park in Northeast Austin. In response to these complaints, PSEM planned an undercover operation. Sergeant David Becker briefed members of the operation on the specific plan at 5:00 a.m. at Headquarters, and assignments were made to officers assigned to the sting.

5. Officer Frank Corpus and I were partnered as Bait Officers because he had participated in undercover park operations before, and had experience in public lewdness stings. I wore jeans, a t-shirt, with badge on a chain under my shirt. I had a walkie-talkie and Glock 22, .40 caliber pistol inside the waistband of my jeans in the back.

6. Ofcr. Corpus and I rode from HQ to the park with the Sergeants, then walked from the SUV, and took positions at the restrooms. We had a few words with a couple of males, but no incident.

7. The rain got really heavy and we were soaked and cold, so with no subjects around we returned to the SUV. At that point, Sgt. Becker advised that he had been assaulted. We joined in the search for the subject, but were unable to locate him in the dark and rain.

8. Around 8 a.m., Sgt. Becker suspended the operation and we met at a nearby restaurant for breakfast and briefing on the indecent exposure, public lewdness and assault on our Sergeant. Sgt. Becker described a tan Mercury Sable, and very tall white male, mid 30's, over 200 pounds, red t-shirt, orange shorts, and white sneakers, who identified himself as "Travis." I remember Sgt. Becker describing him as "looking like a big moose as he ran into the woods!"

9. When the rain lifted about an hour later the operation resumed at the park. Sgt. Becker again parked the SUV to maintain visual on Ofcr. Corpus and me as we walked to the restrooms. Almost immediately we spotted a suspect fitting the description we were given of "Travis" approaching a vehicle also fitting the description we were given, and said to each other, "That's him, that's the guy." We had probable cause to make an arrest based on the briefing.

10. As we were walking in the direction of the vehicle, the suspect spotted us and ran to his car. I pulled my badge out of the neck of my t-shirt so it was plainly visible, and we ran trying to reach the vehicle before he could get in. Ofcr. Corpus and I began yelling, "Police, Stop!" but he jumped in his car and locked the door.

11. The suspect had been in the park for an hour before dark and in the pouring rain for hours, so I feared that he jumped into his car to get a weapon knowing that he had just assaulted a police officer, and I did not know what he was capable of at that time. Ofcr. Corpus and I both began yelling, "Stop, Police Officers, step out of the vehicle and show us your hands." The suspect ignored our verbal commands, and shouted "Fuck you!"

12. After he locked the doors, I could no longer see his hands. Fearing the suspect was reaching for a weapon, I pounded on the hood of the vehicle with my hand continuing to give verbal commands "Police Officer, Open the door!" as Ofcr. Corpus was giving commands from the side of the vehicle. There was no way he could not hear us both yelling commands, and we both had our badges in plain view. He refused our commands and started the ignition.

13. Once he started the ignition I moved from my position in front of the car. Although he was parked at the curb, he could easily floor it and jump the curb, so I moved to the left of the vehicle.

14. The suspect immediately slammed the car in reverse, and floored it. I could no longer see Ofcr. Corpus and feared he had been run over and was dead. I've never been so terrified in my life, but I just automatically fell back on years of training and experience in law enforcement.

15. The suspect then immediately turned the steering wheel, threw the car into drive, and again floored it bearing down on me. I thought I was about to be run over and killed by a speeding 2-ton vehicle. Everything happened so fast I didn't think I had time to save my life.

16. He never put his hands up in the air or said please don't shoot me as he alleges. He said "Fuck you."

17. I opened fire as I tried to get out of the direct path of the vehicle with the good faith belief that he was trying to kill me to evade arrest again. I managed to avoid being hit by stepping to the right side while continuing to fire, but the suspect refused to stop and instead sped away. I knew I had to fire because the car could quickly swerve and hit me if I just moved to the side without firing. The driver's side window shattered, but still the suspect would not stop.

18. As soon as the car passed me and the threat was over, I ceased firing. With the adrenaline running from having just escaped being run over, at the time I was not sure how many shots I fired. I now know that my Glock had about sixteen (16) rounds, but I only fired seven (7). It went by in an instant with hardly enough time to react in time to save myself.

19. I was not standing in front of the vehicle when I opened fire because he reversed and turned the wheel toward me. I would not put myself at risk standing in front of a two-ton machine I know could run over me. If I had just tripped, I would have been hit, run over and would likely be dead.

20. The suspect got away and I screamed, "Frankie, I thought he was going to kill us!" He tried to calm me down, and I told him I thought he had been run over. We were both in shock, sat

down, and didn't talk much. I just kept repeating to my self, "Oh my God, Oh my God, he tried to kill me."

21. I saw the Sergeants in the SUV immediately follow the vehicle, and heard our patrol units lights and sirens going after him.

22. No shots were fired until the suspect almost ran over my partner and was trying to run over me. If the suspect had followed our verbal commands, I would never have fired. In six (6) years as an armed peace officer, I have only fired my duty weapon at the firing range. This was the first time a subject had tried to kill me, so I fired in fear of my life. During my six years as a police officer, I have not had a single excessive force complaint, and I have no sustained complaints by Internal Affairs. I was not disciplined for this incident because I followed my training and the use of force policy.

23. I have been trained to respond to deadly force with deadly force, and our policies specify that a vehicle is a deadly weapon.

24. I am familiar with policies and procedures for Austin Park Police, PSEM, and APD because I have served in each department, and the policy on use of force is the same. An officer should give verbal commands when feasible, and may only use the level of force that is reasonably necessary to bring an incident under control, and I did just that when I ceased firing after the threat passed. Deadly force may only be used when an officer has a reasonable belief that a suspect poses a threat of death or serious physical harm to the officer or another. I feared my partner was dead and I was next.

25. I attended the Police Academy at San Antonio College for nine (9) months, 560 hours of training, and attained my peace officers license in 2004. I received 642 hours of training, including training in Basic Peace Officer; Basic Crime Investigation; Cultural Diversity; Overview of

Drugs; Racial Profiling; Asset Forfeiture; Traffic; Identity Theft; Patrol / Tactical; TCIC / NCIC. In 2005, I joined PSEM and attended a modified Academy. I have received 854 hours of training from the City of Austin, including training in ALERRT; Mental Health Peace Officer Training Course; Defensive Tactics; Law; Sex Crimes; Identity Theft; Rural Organized Crime; Racial Profiling; The Crime Victim; Legal Standards for Law Enforcement Officers; Crime Scene Investigation; Child Abuse Prevention and Investigation; Patrol/Tactical Seminar; Use of Force; Arrest, Search, and Seizure; Crisis Intervention; Multi Cultural Diversity Awareness of Law Enforcement Professionals. Both training is Texas Commission on Law Enforcement ("TCLEOSE") certified. I then rode four (4) months with Field Training Officers ("FTO's"), followed by being shadowed by an FTO for one (1) month before being released solo.

26. During my six years with the City of Austin, all of my Success Strategy Performance Reviews ("SSPR's") have been rated satisfactory or above.

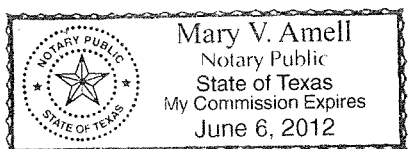
27. Attached are true and correct copies of my training record, my IAD summary, and a photograph taken of me at the scene after the incident.

28. I have read the foregoing affidavit, I have personal knowledge of the facts stated therein, and they are true and correct."

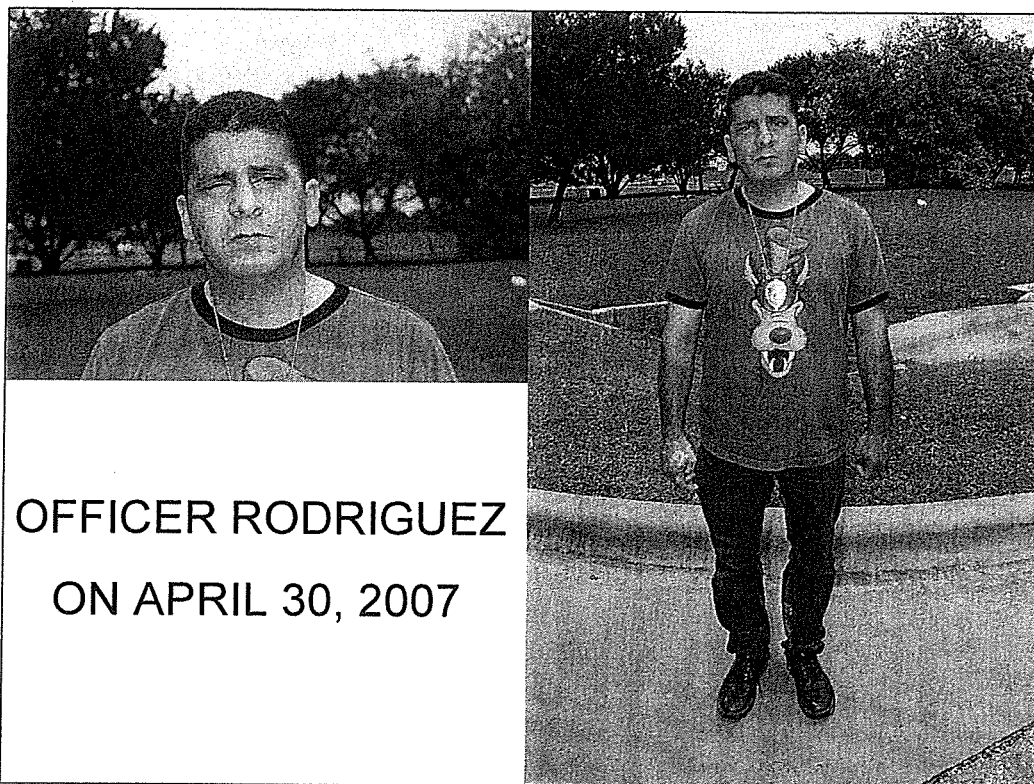
SIGNED this ^{14th}~~13th~~ day of January, 2011.


DAVID RODRIGUEZ

SUBSCRIBED AND SWORN TO BEFORE ME on this 14th day of January, 2011, to certify which witness my hand and official seal.




NOTARY PUBLIC - STATE OF TEXAS



Read statement while this slide is up

Texas Commission On Law Enforcement Officer Standards And Education**Personal Information**

Name

ID RODRIGUEZ

TCLEOSE ID (P ID)

309831

Date Of Birth	Citizen	Race	Gender
12/2/1968	Yes	Hispanic	Male

Federal ID

State ID

Education Information

Institution	Hours	Education
	0	High School
EL PASO COMM. COLLEGE	58	College Credits
Total Hours	58	
Total Training Hours	1160	

Service History

Appointed As	Department	Award	Service Start Date	Service End Date	Service Time
Regular Peace Officer	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT	Peace Officer License	8/19/2005		2 years, 11 months
Regular Peace Officer	AUSTIN PARK POLICE	Peace Officer License	5/26/2005	8/19/2005	0 years, 3 months
Regular Peace Officer	TEXAS LUTHERAN POLICE DEPT.	Peace Officer License	8/30/2004	4/25/2005	0 years, 8 months

Total Service Time

Description	Service Time
Regular Peace Officer	3 years, 10 months
Total officer time	3 years, 10 months

Award Information

Award	Type	Action	Action Date
Peace Officer License	License	Granted	9/3/2004
Basic Peace Officer	Certificate	Certification Issued	10/27/2007
Intermediate Peace Officer	Certificate	Certification Issued	10/27/2007

Courses Completed
09/01/2007 - 08/31/2009

Course	Course Title	Course Date	Course Hours	Institution	Training Mandates
3311	ALERRT	5/1/2008	16	TEEX Central Texas Police Academy	
4001	Mental Health Peace Officer Training Course	4/10/2008	32	Hays Co. Sheriff's Academy	Crisis Intervention Training Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01
3800	Technical/Specialized	2/7/2008	20	Austin Police Academy	
2040	Defensive Tactics	1/18/2008	40	Austin Public Safety and Emergency Mgmt. Dept.	
3800	Technical/Specialized	1/10/2008	7	Austin Public Safety and Emergency Mgmt. Dept.	
3100	LAW	12/19/2007	10	Austin Police Academy	
3899	Technical/Specialized Seminar	10/18/2007	4	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	
3200	Technical/Specialized	10/18/2007	2	Austin Public Safety and Emergency Mgmt. Dept.	
32003	Sex Crimes [DE]	10/11/2007	5	TCLEOSE POSEIT	
3277	Identity Theft	10/10/2007	4	TCLEOSE POSEIT	Identity Theft
32002	Rural Organized Crime [DE]	10/8/2007	3	TCLEOSE POSEIT	
3256	Racial Profiling	10/8/2007	7	TCLEOSE POSEIT	Racial Profiling
3255	Asset Forfeiture	10/8/2007	4	TCLEOSE POSEIT	Asset Forfeiture
32005	The Crime Victim (DE)	10/3/2007	5	TCLEOSE POSEIT	
32004	Legal Standards for Law Enforcement Officers (DE)	10/3/2007	6	TCLEOSE POSEIT	
35002	Suicide Prevention in Corrections (DE)	10/1/2007	4	TCLEOSE POSEIT	
2106	Crime Scene Investigation (Intermediate)	9/28/2007	32	Capital Area Council of Governments	Crime Scene Investigation (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	9/20/2007	24	Capital Area Council of Governments	Child Abuse Prevention and Investigation
Unit Hours			225		

09/01/2005 - 08/31/2007

Course	Course Title	Course Date	Course Hours	Institution	Training Mandates
3200	Patrol/Tactical Seminar	8/30/2007	4	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	

Print Date: 7/23/2008

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Courses Completed

09/01/2005 - 08/31/2007

Course	Course Title	Course Date	Hours	Institution	Training Mandates
3300	Patrol/Tactical	8/27/2007	3	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	
3800	Technical/Specialized	8/16/2007	4	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	
2107	Use of Force (Intermediate)	7/27/2007	20	San Antonio College LEA	Use of Force (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	7/20/2007	20	San Antonio College LEA	Arrest, Search, and Seizure (Intermediate)
1999	Personnel Orientation by Dept. Basic Proficiency	7/11/2007	0	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	Personnel Orientation
3841	Crisis Intervention Training	6/25/2007	16	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	Crisis Intervention Training Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01
3800	Technical/Specialized	5/21/2007	2	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	
3300	Patrol/Tactical	5/21/2007	4	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	
3806	Hazardous Materials (Haz-Mat)	2/12/2007	8	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	
2109	Spanish for Law Enforcement (Intermediate)	11/9/2006	24	Capital Area Council of Governments	Spanish for Law Enforcement (Intermediate)
32002	Rural Organized Crime [DE]	10/17/2006	3	TCLEOSE POSEIT	
3264	Special Investigator Certification Course	8/25/2006	24	Texas Municipal Police Association	Special Investigative Topics
2067	S.F.S.T. Practitioner	8/11/2006	24	Capital Area Council of Governments	
3331	Terrorism Awareness for Emergency First Responders	8/4/2006	5	TCLEOSE POSEIT	
3907	MultiCultural Diversity/Awareness for L.E. Prof.	6/27/2006	5	Austin Police Academy	
3300	Introduction to the Incident Command System	6/20/2006	3	Austin Public Safety and Emergency Mgmt. Dept.	

Courses Completed

09/01/2005 - 08/31/2007

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
66200	Incident Command System Basics	6/20/2006	3	Austin Public Safety and Emergency Mgmt. Dept.	
3300	Patrol/Tactical	4/23/2006	4	Austin Public Safety and Emergency Mgmt. Dept.	
3831	Basic Life Support [American Heart Association]	3/16/2006	8	Austin Public Safety and Emergency Mgmt. Dept.	
3300	Patrol/Tactical	3/1/2006	16	TEEX Central Texas Police Academy	
3300	Patrol/Tactical	1/4/2006	4	Austin Public Safety and Emergency Mgmt. Dept.	
3700	Management/Supervision	11/2/2005	1	Austin Public Safety and Emergency Mgmt. Dept.	
3300	Patrol/Tactical	10/19/2005	3	Austin Public Safety and Emergency Mgmt. Dept.	
3722	Peace Officer Field Training	9/17/2005	630	AUSTIN PUBLIC SAFETY & EMERGENCY MANAGEMENT (Training Rosters)	Peace Officer Field Training
Unit Hours			838		

09/01/2003 - 08/31/2005

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3300	Patrol/Tactical	5/12/2005	10	OTHER TRAINING	
3214	Family Violence Web w/ Exercises	4/30/2005	8	TCLEOSE POSEIT	Part 1 of 4 (POSEIT) Special Investigative Topics
32001	Basic Crime Investigation [DE]	2/3/2005	8	TCLEOSE POSEIT	
3256	Racial Profiling	1/31/2005	7	TCLEOSE POSEIT	Racial Profiling
3277	Identity Theft	1/26/2005	4	TCLEOSE POSEIT	Identity Theft
3939	Cultural Diversity	1/25/2005	8	Alamo Area LEA	Cultural Diversity
32006	Overview of Drugs (DE)	9/29/2004	3	TCLEOSE POSEIT	
3255	Asset Forfeiture	9/5/2004	4	TCLEOSE POSEIT	Asset Forfeiture
1000	Basic Peace Officer	8/1/2004	588	San Antonio College LEA	
3400	Traffic	7/23/2004	4	San Antonio College LEA	
3300	Patrol/Tactical	4/2/2004	4	San Antonio College LEA	
3300	Patrol/Tactical	3/26/2004	4	San Antonio College LEA	
3807	TCIC/NCIC for Less than Full Access Operators	3/21/2004	8	Texas Department of Public Safety LEA	
Unit Hours			660		
Total Hours			1723		

Total Hours

Total Education Hours 1160

Total Training Hours 1723

Total Hours 2883

Internal Affairs History of Sustained Allegations

Internal Affairs Division

David Rodriguez #6684

Date of Commission: 09/18/2005

This employee has had no sustained complaints to Internal Affairs as of 01/12/2011